

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6786 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No.

PARMAR JAYAMALIJI KHUMAJI

Versus

HASM MASUD AKHTAR

Appearance:

MR VM DHOTRE for Petitioner

MR SATYAJIT SEN for Respondent No.1.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 04/02/97

ORAL JUDGEMENT

This Special Civil Application is directed against the order dated 21.8.1996 passed by the Gujarat Secondary Education Tribunal rejecting present petitioner's application dated 8.5.1996 for being impleaded as a party.

Respondent No.1 Hasmi Masud Akhtar claiming to be a teacher working in Rajput Kelavani Sahayak Mandal filed

an application No.232 of 1995 dated 23.5.1995 before the Secondary Education Tribunal, Ahmedabad with a specific prayer that the selections held for the post of teachers on 29.4.1995 may be set aside and in case any appointments are made on that basis such appointments may also be set aside. There is no dispute that the present petitioner has been selected in the selection held on 29.4.1995. The tribunal has rejected the application of the present petitioner by saying that the petitioner has no substantive right to file an application under section 38 of the Act before the Tribunal and therefore he cannot file any application under Order 1 Rule 10(2) of the Code of Civil Procedure for being impleaded as a party. The learned counsel for respondent No.1 Mr.Sen has referred to the provision of Section 38 of the Gujarat Secondary Education Act, 1972 and has submitted that Section 38 covers only those disputes which are between any working teacher and the management and therefore the application of the petitioner for being impleaded as a party has been rightly rejected by the tribunal. He has also placed reliance on 1988(2)GLR Pg.807 [Pandya Purnaben Pranshankar & Others Vs. Director of Education, Higher Secondary Education Department & Others], A.I.R. 1976 S.C. Pg.425 [Rohtas Industries Ltd. & Another Vs. Rohtas Industries Staff Union & Others] and Judgment Today 1996(1)SC Pg.258 [Union of India Vs. S.S.Uppal & Another]. In Purnaben's case (Supra) decided by this Court contender like the petitioner was already a party to the proceedings and this case is of no avail to the respondent No.1 in the facts of the present case. In Rohtas Industries Case (Supra) decided by the Supreme Court it has been held that no relief outside statutory provision can be given. I fail to understand how this principle has any relevance with the question involved in the present case. The present petitioner has not approached the tribunal to enforce the selection. He only seeks to be impleaded as party in an application filed by the working teacher praying for setting aside the selection in which he had appeared and has been selected. JT.1996(1) SC Pg.258 [Union of India] (Supra) only says that a selected candidate has no right of appointment. That also is not the question involved in the present case. The only question with which this Court is concerned while hearing the challenge against the Tribunal's order dated 21.8.1996 is as to whether the present petitioner should have been taken as necessary and proper party or not. There is no dispute whatsoever that the application moved by respondent No.1 contains specific prayer against the selection dated 29.4.1995 of which the present petitioner may be direct beneficiary if the management seeks to act upon and give effect to the

recommendation made by the selection committee, he being one of the selected candidates. In face of the prayers made in the application moved by respondent No.1, it is clear that the present petitioner was necessary and proper party and scope of section 38 of the Gujarat Secondary Education Act may be for a decision of the dispute inter se between the working teacher and the management but that would not impede the right of audience of a person whose selection is sought to be set aside in an application filed by a working teacher against the management under section 38. In my opinion, the order passed by the tribunal suffers from manifest error of law apparent on the face of the record and such order cannot be sustained in the eye of law.

Accordingly, this Special Civil Application is allowed. The order dated 21.8.1996 passed by the Gujarat Secondary Education Tribunal in Application No. 232 of 1995 is hereby quashed and set aside. The present petitioner shall be considered as contesting respondent in this application and henceforth the tribunal shall hear the matter in presence of the present petitioner as party to the application and decide the matter in accordance with law. If any order has been passed to the prejudice to the petitioner, in the meantime, such order will not come in the petitioner's way for any purpose whatsoever. Rule is made absolute. No order as to costs. Interim order dated 25.9.1996 stands automatically vacated.
